

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

ABRAHAM MOJICA GARCIA,
Institutional ID No. 64184-308,

Plaintiff,

v.

GILES W. DALBY CORRECTIONAL
FACILITY, *et al.*,

Defendants.

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CIVIL ACTION NO.
5:15-CV-00040-C

ECF

ORDER

Plaintiff Abraham Mojica Garcia, acting *pro se*, filed a petition for writ of habeas corpus on February 17, 2015, but by Order dated March 16, 2015, this Court construed the petition to be a civil rights complaint filed pursuant to 42 U.S.C. § 1983 and ordered Plaintiff to file an amended complaint on the § 1983 form and pay the filing fee or file an application to proceed *in forma pauperis* and a certified copy of his certificate of inmate trust account. Plaintiff filed an amended complaint, application to proceed *in forma pauperis*, and a certified copy of his certificate of inmate trust account on March 25, 2015. He was subsequently granted permission to proceed *in forma pauperis*. Defendants have not filed an answer.

On April 10, 2015, the complaint was transferred to the docket of the United States Magistrate Judge, who determined that it would not be feasible to conduct an evidentiary hearing pursuant to *Spears v. McCotter*, 766 F.2d 179, 181-82 (5th Cir. 1998), and ordered the Giles W. Dalby Correctional Facility to provide authenticated copies of the records pertaining to Plaintiff's allegations. By Order dated September 23, 2015, the Magistrate Judge ordered Plaintiff to answer a questionnaire. *See Watson v. Ault*, 525 F.2d 886, 892 (1976) (holding that a questionnaire may be used to develop the factual basis of a prisoner complaint). Plaintiff did not file his answers to the

questionnaire. When Plaintiff failed to consent to the jurisdiction of the Magistrate Judge, she completed the preliminary screening pursuant to 28 U.S.C. §§ 1915 and 1915A, filed a Report and Recommendation on November 4, 2015, and transferred the complaint back to this Court. Plaintiff did not file a reply or objections to the Report and Recommendation.

The undersigned District Judge has made an independent examination of the record in this case and finds that the Magistrate Judge's findings and conclusions should be ADOPTED.

It is, therefore, **ORDERED**:

(1) Civil Action No. 5:15-CV-00040-C and all claims alleged therein are DISMISSED without prejudice for want of prosecution.

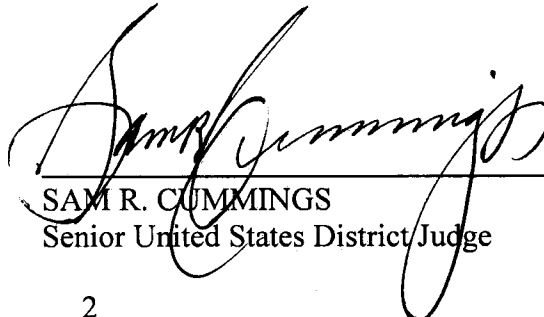
(2) Any pending motions are DENIED.

(3) The dismissal of Plaintiff's complaint does not release Plaintiff or the institution where he is incarcerated from the obligation to pay any filing fee previously imposed. *See* 28 U.S.C. § 1915(b)(1) ("Notwithstanding subsection (a), if a prisoner brings a civil action or files an appeal in forma pauperis, the prisoner **shall be required to pay the full amount of a filing fee.**") (emphasis added); *Hatchet v. Nettles*, 201 F.3d 651, 654 (5th Cir. 2000) ("No relief from an order directing payment of the filing fee should be granted for a voluntary dismissal.").

Judgment shall be entered accordingly.

Plaintiff is advised that if he appeals this Order, he will be required to pay the appeal fee of \$505.00 pursuant to the PLRA, and he must submit an application to proceed *in forma pauperis* and a 6-month Certificate of Inmate Trust Account at the same time he files his notice of appeal.

Dated December 3, 2015.



SAM R. CUMMINGS
Senior United States District Judge